

IN THE CHANCERY COURT OF HICKMAN COUNTY, TENNESSEE

KEVIN P. LAVENDER, In his official)	
capacity as Commissioner-In-)	
Possession of Sentinel Trust Company)	
and Receivership Management, Inc.,)	
Receiver of Sentinel Trust Company,)	
)	
Plaintiffs,)	No. 4980
)	
v.)	
)	
)	
)	
DANNY N. BATES, et al.,)	
)	
Defendants.)	
)	

**PLAINTIFFS' MOTION TO STRIKE AFFIDAVIT OF DANNY N. BATES FILED
ON MARCH 4, 2010, OR IN THE ALTERNATIVE, RESPONSE AND
OBJECTION TO DANNY BATES' AFFIDAVIT**

I. Introduction

On March 4, 2010, Danny Bates filed an affidavit, a copy of which is attached as **Exhibit A** (hereinafter "Affidavit"). The Affidavit should be, and Plaintiffs' request that it be, stricken. Rule 12.06 Tenn. R. Civ. P. Plaintiffs' request this relief for two reasons. First, the filing of the Affidavit is in violation of the Court's October 8, 2009 Order. Second, the apparent purpose of the Affidavit is to attempt to establish "facts" in favor of Danny Bates which have already been found against Danny Bates as a result of his criminal conviction and as a result of the findings set forth in In re: Sentinel Trust Company, 206 S.W.3d 501 (Tenn. Ct. App. 2005). In the alternative, Plaintiffs would request that this filing be considered as their response and objection to the contents of the Affidavit.

II. Motion to Strike Standard

Under Rule 12.06 Tenn. R. Civ. P., a litigant can move for, and the Court can order, that any “redundant, immaterial, impertinent or scandalous matter” contained in a filing, or the entire filing, be stricken. Rule 12.06 Tenn. R. Civ. P.; See Curve Elementary School PTO v. Lauderdale County School Board, 608 S.W.2d 855, 857 (Tenn. Ct. App. 1980). Granting or denying a motion to strike is within the sound discretion of the trial court. NACCO Materials Handling Group, Inc. v. Toyota Materials Handling USA, Inc., 366 F. Supp.2d 597, 602 (W.D.Tn. 2004).

III. Bates’ March 4th Affidavit Violates the Court’s October 8, 2009 Order

On October 8, 2009, the Court entered an Order which set forth specific deadlines for the filing of papers relating to Plaintiffs’ Motion for Summary Judgment. Copy of Order attached as **Exhibit B**. The Court’s Order specifically states:

The defendants [i.e., Mr. Bates] shall have until January 27, 2010 to file a response [to Plaintiffs’ Motion for Summary Judgment].

Exhibit B at 2 (brackets added for clarity). Danny Bates did file a response on January 22, 2010. Plaintiffs were allowed until February 15, 2010 to file a reply to the responses, but there was no allowance in the Court’s Order for any filing of a sur-reply or other responses in relation to that Motion for Summary Judgment.

In disregard to the Court’s Order, Danny Bates filed the Affidavit on March 4, 2010.¹ Though it is nowhere stated, the contents of the Affidavit make clear that it was

¹ Danny Bates’ March 4th Affidavit is the third in what appears to be a continuing series of filings made by Defendants in this case beyond their January 27, 2010 response deadline. On February 25, 2010, Deanna June Bates filed a Motion to Dismiss and on March 2, 2010, Danny Bates filed a Motion to Dismiss Complaint for Misconduct by Plaintiffs. On March 5, 2010, after Danny Bates’ March 4th Affidavit was filed, Clifton Todd Bates and Gary O’Brien filed separate motions as well.

filed as a further response to the Plaintiffs' Motion for Summary Judgment and/or as a sur-rely to Plaintiffs' Reply Brief filed on February 16, 2010.²

This Court's orders are not to be casually disregarded. Even as a pro se litigant, Danny Bates must abide by the Court's orders. There was nothing about the Court's October 8, 2009 Order that was unclear -- Danny Bates had until January 27, 2010 to file whatever he wanted to file in response to Plaintiffs' Motion for Summary Judgment. Filing deadlines are critical to the orderly progression of a case and are essential to this Court's ability to address its own docket. Disregard of those deadlines, as is evidenced by the filing of the Affidavit, should not be encouraged. Accordingly, the Affidavit should be stricken as being in violation of the Court's October 8, 2009 Order.

IV. Danny Bates' March 4th Affidavit Attempts to Re-Litigate Facts Already Preclusively Determined Against Him

Reading Danny Bates' March 4, 2010 Affidavit (copy attached as **Exhibit A**), one is struck by two overarching matters that the Affidavit attempts to establish: 1) Danny Bates says that he did not misappropriate Sentinel Trust's fiduciary funds to build the 205 Bastin Road house or to pay a \$575,000 settlement of a civil judgment (see, e.g., Affidavit at ¶¶4-28), and 2) Danny Bates says that he ran Sentinel Trust in compliance with all legal requirements imposed upon a trust company and pursuant to appropriate policies and procedures (see, e.g., Affidavit at ¶¶29-43). Danny Bates, however, is foreclosed from presenting facts in these areas because of the criminal judgments against him and because of the findings in In re: Sentinel Trust Company, 206 S.W.3d 501 (Tenn. Ct. App. 2005).

² Plaintiffs' Reply Brief was filed on February 16, 2010 because February 15, 2010 (the deadline in the Court's October 8, 2008 Order) was Presidents' Day and the Hickman County Clerk and Master's office was closed. See Rule 6.01 Tenn. R. Civ. P.

a) **Danny Bates' Affidavit Contradict Facts Preclusively Established Against Him by Criminal Judgments**

Danny Bates was found guilty of stealing Sentinel Trust's fiduciary funds to build the 205 Bastin Road house and was found guilty of stealing \$575,000 of Sentinel Trust's fiduciary funds to pay a settlement of a civil judgment of that amount.³ Danny Bates chose not to appeal that criminal judgment and that judgment is final. As noted in Plaintiffs' Memorandum of Law, filed December 23, 2009, a criminal conviction by a jury is conclusive on the issue in a subsequent civil action and works an estoppel regarding the criminal defendant later maintaining differently. Ali v. Moore, 984 S.W.2d 224, 229 (Tenn. Ct. App. 1998). Also, issues essential to the criminal jury verdict must be regarded as having been established against the criminal defendant. U.S. v. Beaty, 245 F.3d 617, 624 (6th Cir. 2001).

▪ The criminal jury found that Danny Bates stole, from Sentinel Trust's fiduciary accounts, the funds to build his multi-million dollar house and to pay off a \$575,000 settlement of a civil judgment. Moreover, and significantly, the criminal jury found against Danny Bates' "claim of right" defense -- i.e., Bates' position that the money was his. Plaintiffs' Statement of Undisputed Facts (filed December 23, 2009) at ¶7. Nevertheless, the Affidavit attempts to establish information regarding a) loans supposedly owed to Bates from Sentinel Trust as a result of his purchase of Sentinel Trust, b) supposed payment of those loans from Sentinel Trust to Danny Bates as providing funds to build the 205 Bastin Road house – and, therefore, according to the

³ The instructions to the criminal jury made clear that to find Danny Bates guilty of two theft counts, they would need to find that he took over \$60,000 of Sentinel Trust's property held "as indenture trustee for funds belonging to other persons who had funds on deposit in Sentinel's trust account." Plaintiffs' Statement of Undisputed Facts (filed December 23, 2009) at ¶3. The criminal jury found Danny Bates guilty and, thus, necessarily found that what he stole were Sentinel Trust's fiduciary funds.

Affidavit, the money used to build the 205 Bastin Road house was Danny Bates' money,

c) assets supposedly held by Danny Bates' alter ego company, Sentinel Services Corporation, d) the supposed use of that Sentinel Services Corporation money (not, according to the Affidavit, Sentinel Trust's fiduciary funds) to pay the \$575,000 settlement of the civil judgment, and e) how the books and records Sentinel Trust were well kept and reflected that certain monies and/or expenses were personal to Danny Bates and other monies were not. Affidavit at ¶¶4-28.

Respectfully, every bit of this information was available to Danny Bates prior to and at the time of his criminal trial and, indeed, most (if not all) of it was presented to the criminal jury. Despite his efforts, Danny Bates was found guilty of stealing the funds used to build the 205 Bastin Road house and to settle the civil judgment. Therefore, he is foreclosed from re-submitting facts and issues relating to those criminal jury findings. Ali, 984 S.W.2d at 229; Beaty, 245 F.3d at 624. Danny Bates' attempts to do so in the Affidavit should be denied and the Affidavit stricken as setting forth redundant, immaterial and impertinent information.

b) **Danny Bates' Affidavit Contradicts Facts Preclusively Established by the Decision in In re: Sentinel Trust Company**

Danny Bates' March 4, 2010 Affidavit also goes to great length to set forth his position that Sentinel Trust, which operated under his absolute control (see, e.g., Affidavit at ¶¶4 and 29) a) correctly authorized and set up bank accounts, b) established and followed appropriate policies and procedures, c) correctly booked transactions, d) complied with all statutory and governmental rules and regulations, e) created and addressed overdrafts in defaulted bond issue accounts appropriately and f) appropriately avoided transactions improper for trustees to engage in. Affidavit at ¶¶29-43. These

positions taken by Danny Bates in the Affidavit are the exact opposite of what was found in relation to Danny Bates' running of Sentinel Trust in In re: Sentinel Trust, 206 S.W.3d 501 (Tenn. Ct. App. 2005). For example, in that case -- the factual findings of which are binding upon Danny Bates as a matter of law -- The Tennessee Court of Appeals found as follows:

[Danny Bates] admit[s] that Sentinel's practice of borrowing monies on deposit in the pooled fiduciary account from non-related bond issues to fund the expenses of defaulted bond issues resulted in a significant deficiency in cash in the pooled fiduciary account. Moreover, Mr. [Danny] Bates specifically admitted that he used the total cash held by the trust department (i.e., monies deposited in trust to be used for the purposes specified in the indenture) in a manner that was contrary to the indentures that governed Sentinel's actions as trustee. By [his] own admissions, prior to the Commissioner's taking possession of Sentinel, [Danny Bates] was engaging in practices that not only violated the Tennessee Banking Act, but also violated the FDIC's Statement of Principles of Trust Department Management, which Sentinel adopted as part of its corporate policies. Furthermore, these practices violated the indentures and contractual agreements between the bond issuers and Sentinel as fiduciary.

206 S.W.3d 524-25 (brackets added for clarity to substitute Danny Bates for "Appellants" and to insert "Danny Bates" when he is the "Mr. Bates" referenced; emphasis added).
See also Plaintiffs' Statement of Undisputed Facts (filed December 23, 2009) at ¶39.

Accordingly, Danny Bates' effort to say, in his Affidavit, that he acted appropriately regarding the running of Sentinel Trust -- and, thus, did not violate fiduciary duties owed to that company -- is barred because of the findings set forth in In re: Sentinel Trust. Despite his attempts to do so in his Affidavit, he is collaterally estopped from taking any position contrary to the facts found against him in In re: Sentinel Trust opinion. Because the Affidavit attempts to do exactly that, it should be

stricken due to it being redundant, immaterial and impertinent. Rule 12.06 Tenn. R. Civ. P.

V. Outrageous Assertions in Affidavit Supports the Relief of its Being Stricken

Aside from being preclusively estopped from saying the matters he says in the Affidavit, the outrageous nature of some of what is said in the Affidavit further supports striking the Affidavit. Perhaps the best example of this is ¶15 of the Affidavit which states:

The postings in said separate personal account maintained on Sentinel's computer system also show that my residential construction-in-progress account was closed out by transfer of ownership [of the 205 Bastin Road house] to my wife Deanna June Bates as of February 28, 1999 when the builder provided notice that it was ready for occupancy (emphasis and bolding added) (bracket added for clarity).

In totally self-serving fashion, Danny Bates, under oath, declares that ownership of the 205 Bastin Road house was transferred to his wife "as of February 28, 1999." With all due respect to Danny Bates and his desperation, neither the closing of a supposed "construction-in-progress" account, nor the receipt of a certificate of occupancy from Lyle Construction transfers ownership. Moreover, it is not subject to dispute that the only transfer of ownership of the 205 Bastin Road property/house from Danny Bates to his wife was on April 23, 2004. See Exhibit 11 to Plaintiffs' Motion for Summary Judgment. For Danny Bates to come forward now and try to maintain differently a) clearly indicates the intended purpose of the Affidavit, b) is impertinent and scandalous and, c) supports the striking of the Affidavit.

VI. Danny Bates Has Had Ample Opportunity for Discovery

Danny Bates ends the Affidavit by stating that "further discovery is required to establish additional facts to be presented for trial by jury as demanded." (emphasis

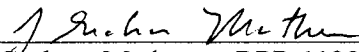
added). See Affidavit at ¶51. Therefore, Danny Bates appears to be stating that if the pending motion for summary judgment is denied, then he will need to conduct further discovery to establish additional facts as he prepares for a jury trial on the case. Thus, the request for additional discovery, at least on its face, is not one of a supposed need for discovery in relation to the pending motion for summary judgment pursuant to Rule 56.07 Tenn. R. Civ. P.

If Danny Bates contends, however, that he does need additional discovery to respond to the pending motion for summary judgment, such request should be denied. Danny Bates has had the opportunity to conduct discovery for over three and one-half years -- i.e., from the May 2005 filing of this case until January 29, 2009 when the progression of the case was stayed by this Court's Order in deference to the criminal proceedings then pending against Danny Bates. And Danny Bates was represented by counsel during that 3½ year time frame. Therefore, Danny Bates cannot be heard to say that he has not had the opportunity to conduct discovery. Moreover, the generalized nature of Danny Bates' request for further discovery, and the fact that the core issues upon which Plaintiffs' summary judgment are based are already preclusively determined against him, clearly indicate that Danny Bates is just trying to further delay the proceedings and decidedly weigh against allowance of any "further discovery" by Danny Bates prior to decision of the pending summary judgment motion.

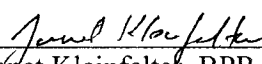
VII. Conclusion

For the reasons set forth herein, Plaintiffs move the Court for an order striking the March 4, 2010 Affidavit of Danny N. Bates pursuant to Rule 12.06 Tenn. R. Civ. P. In the alternative, Plaintiffs' respond to and object to the Affidavit as set forth herein.

Respectfully submitted,



J. Graham Matherne, BPR 11294
WYATT, TARRANT & COMBS, LLP
2525 West End Avenue, Suite 1500
Nashville, Tennessee 37203-1423
Telephone: 615.244.0020
Facsimile: 615.256.1726
Counsel for Receiver of Sentinel Trust
Company



Janet Kleinfelter, BPR 13889 *(by G. Matherne of counsel)*
Office of the Tennessee Attorney General
425 5th Avenue North
Nashville, TN 37243
Telephone: 615.741.7403
Facsimile: 615.532.8223
Counsel for Commissioner-in-Possession of
Sentinel Trust Company

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon the following, via U.S. Mail and by Federal Express as noted, on this the 9th day of March, 2010.

David D. Peluso
P.O. Box 250
Hohenwald, TN 38462-0250

Gary O'Brien
163 Shady Lane
Hohenwald, TN 38463

Diana M. Thimmig
Roetzel & Andress
1375 East Ninth Street
One Cleveland Center, Ninth Floor
Cleveland, OH 44114

Danny Bates
Sentinel Services Corporation
205 Bastin Road
Hohenwald, TN 38462
(Via Federal Express
and First Class Mail)

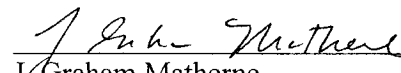
Larry Stewart
Adams and Reese/Stokes Bartholomew
424 Church Street, Suite 2800
Nashville, TN 37219

Deanna June Bates
205 Bastin Road
Hohenwald, TN 38462

James S. Hereford, Jr.
310 W. College Street
P.O. Box 802
Fayetteville, TN 37334-0802

Clifton Todd Bates
312 Bastin Road
Hohenwald, TN 38462

Howard Cochran
P.O. Box 2322
Brentwood, TN 37024


J. Graham Matherne

COPY

IN THE CHANCERY COURT OF HICKMAN COUNTY, TENNESSEE
(Administratively Transferred from Lewis County Chancery Court)

KEVIN P. LAVENDER, In his official
capacity as Commissioner-In-
Possession of Sentinel Trust Company
and Receivership Management, Inc.,
Receiver of Sentinel Trust Company,

Plaintiffs,

v.

DANNY N. BATES, ET AL

Defendants

FILED

AM MAR 24 2010 PM

LINDA C. COLE, CLERK & MASTER
BY *Linda Cole*
No. 4980

AFFIDAVIT OF DANNY N. BATES

STATE OF TENNESSEE)
LEWIS COUNTY)

Personally appeared before the undersigned officer, duly authorized to administer oaths,
DANNY N. BATES, who, after presenting proper proof of identification to me and being sworn,
deposes and says as follows:

1. My name is Danny N. Bates. I am over the age of twenty-one and retired.
2. I reside at 205 Bastin Road, Hohenwald, Lewis County, Tennessee 38462 and my telephone number is 931-796-1144.
3. I am the principal defendant, one of several named defendants in the above-referenced case.
4. I owned or controlled all of the stock of Sentinel Trust Company.
5. I served as Chairman of the Board, Chief Executive Officer and President of Sentinel Trust

EXHIBIT

A

Company.

6. I had bought all of the stock of Sentinel Trust Company in about 1987 and merged into it several businesses I had already created, including the Trust Department of Union Trust Company, General Trust Company and my municipal finance business known as "D. N. Bates & Associates."
7. I sold the business name, fixed assets and ongoing trust business carried under the name "General Trust Company" to Mid-South Bancorp., a Kentucky-based bank holding company as of December 31, 1989 for consideration valued at \$1.5 million and an employment contract to manage the new "General Trust Company," a state trust company organized under provisions of T.C.A. §45-2-101 et seq., as amended, under the oversight of the Tennessee Department of Financial Institutions.
8. I applied the consideration received from Mid-South Bancorp. sale to repurchase all stock owned by other persons and to pay off all corporate debts and liabilities except to me.
9. I treated the sale proceeds as a loan by me to Sentinel Trust Company, which by provisions of my employment contract was powerless to engage in business.
10. I resigned as President of the new General Trust Company in late 1991, forfeiting contractual salary rights and my right to a twenty percent share in its pretax profits, to reactivate the business of Sentinel Trust Company.
11. As Sentinel Trust Company experienced sufficient cash flow permitting it to do so, I withdrew from its cash flow moneys to reimburse me for the loans I had personally made to lend to Sentinel and for Sentinel's other loans and corporate liabilities I had paid from the sale to Mid-South Bancorp.

13. My personal account was separately accounted for and maintained on Sentinel's computer systems and the verified copy of the hard drive provided by the Prosecution in the Davidson County Criminal Court action against me shows that as of January 1, 1997 the cash account balance in my personal account was \$1,048,296 and that it was \$213,555 at February 28, 1999 when the residence at 205 Bastin Road had been completed for occupancy.
14. The difference in cash in said account was due principally for payment of construction billings by Lyell Construction, the contracted builder of the residence.
15. The postings in said separate personal account maintained on Sentinel's computer system also show that my residential construction-in-progress account was closed out by transfer of ownership to my wife Deanna June Bates as of February 28, 1999 when the builder provided notice that it was ready for occupancy.
16. The separate account for Sentinel Services Corporation maintained on Sentinel's computer systems, also as determined from inspection of the verified copy of the hard drive provided in discovery by the Prosecution reflects that at January 1, 1997, Sentinel Services Corporation was holding cash balances in the amount of \$989,056.
17. The detail postings in said separate account for Sentinel Services Corporation maintained on Sentinel's computer system show that on February 5, 2001 the sum of \$885,702.13 was transferred to Sentinel Trust Company's corporate account by check 11303 drawn on the Suntrust operating account.
18. It is undisputed that Sentinel Trust Company applied \$575,000 of that transfer to pay the settlement with NCBC with the prior approval of the Commissioner of the Department of Financial Institutions.

19. I owned and controlled Sentinel Services Corporation, which held cash, investments and other assets nominally for me and related personal interests.
20. I drew no salary from Sentinel Trust Company, which I owned and controlled, from 1990 through 1992.
21. The detailed computer records of Sentinel Trust Company prove that I drew net salary checks totaling \$726,694 from 1993 through 2001 from Sentinel Trust Company, most of which were redeposited into a separate liability account on its balance sheet further identified as BatesDN 70-07056-00 and into my separately maintained personal account.
22. The detailed computer records of Sentinel Trust Company prove that I made other, non-payroll deposits in the net sum of \$298,379 from 1991 through 2001 into Sentinel Trust Company, for credit to the separate liability account on its balance sheet further identified as BatesDN 70-07056-00.
23. Every transaction posted in the detailed computer records of Sentinel Trust Company had to show the account being debited or credited, which is the feature of double-entry bookkeeping.
24. Every account, whether corporate or trust account, had a unique account number and great care was made to insure that every transaction was posted to the correct account.
25. Expenditures made by or for the benefit of trust accounts were posted to the proper trust account.
26. Expenditures made by or for the corporate benefit of Sentinel Trust Company were posted to the appropriate general ledger account.
27. Expenditures made by or for the personal benefit of me or for any family member were

charged to my personal account maintained within Sentinel's books and records.

28. At no time was any personal expenditure of mine charged wrongfully to a trust account.
29. As the owner, Director, and Chief Executive Officer of Sentinel Trust Company I had the responsibility under its By-Laws for the supervision and control over all aspects of the business and property of the Company, pursuant to Article V, §5.3 and Policy No. A-.007. I also served as its Treasurer.
30. Bank accounts of Sentinel Trust Company had to be authorized by corporate resolution of the Board of Directors, that being a requirement of deposit-taking banks.
31. All bank accounts for Sentinel Trust Company were initiated with a corporate resolution and authorization of approved check signors.
32. The setting up of new bank accounts was therefore preconditioned on approval by the Board of Directors by resolution.
33. Neither I nor anyone else could set up a corporate bank account without approval by the Board.
34. Sentinel Trust Company's Policy No. B-.039 required that trust assets be held in a separate trust department within which the assets of each trust account were segregated from each other, numbered in accordance with system is set forth in Policy E-.008. The Trust Department of Sentinel Trust Company was accounted for separately from the corporate accounts in further accordance with T.C.A. §35-15-810.
35. Transactions in the Trust Department created income or expense to be recorded on the corporate accounts. All transfers between the Trust Department and the corporate department were necessary and proper.

36. The assets of the joint and several trust accounts in the separately maintained Trust Department were treated as fiduciary Liabilities of Sentinel Trust Company, pursuant provisions of the FDIC Trust Manual and T.C.A. §35-15-810, and were not, in accordance with generally accepted accounting principles, included in Sentinel's financial statements.
37. Sentinel Trust Company conformed to applicable policies in accounting for fiduciary accounts
38. Sentinel Trust Company also exercised its fiduciary powers in accordance with the other provisions of Chapter 35, Tennessee Code Annotated. The Uniform Trust Code was adopted as of July 1, 2004 and applied retrospectively and prospectively to all trust accounts and is codified at T.C.A. §35-15-101, et seq. With respect particularly to defaulted bond issues, T.C.A. §35-15-802 requires that the trust be administered solely in the interests of the beneficiaries, and violation of duty by the trustee may constitute a breach of trust (T.C.A. §35-15-1001). T.C.A. §35-15-816(b)(4) permits a trustee to deposit money in an account with a regulated financial-service institution and (5) borrow money, with or without security, and mortgage or pledge trust property. Subsection (18) thereof permits a trustee to make loans out of trust property . . . and the trustee has a lien on future distributions for repayment of those loans. The powers of a fiduciary are also described at T.C.A. §35-50-110 and specific subsections deemed noteworthy in connection with defaulted trust accounts are: (8) to borrow money binding on the estate but not upon the fiduciary; (16) to invest liquid assets in . . . , but not limited to, loans secured by mortgages, or liens otherwise imposed, upon real or personal property; (17) to invest funds of the estate in undivided interests in negotiable or nonnegotiable securities, or other assets, the remaining undivided interest in which are held by the fiduciary in a fiduciary capacity for the use and

benefit of other beneficiaries; (20) to deposit funds . . . in any one or more banks . . . insured under the Federal Deposit Insurance Act; (22) to bring, prosecute or defend actions at law or in equity for the protection of the assets . . . or enforcement of the provisions of the instrument; and (33) to do any and all other things . . . necessary or appropriate . . . and in the fiduciary's judgment in the best interests of the estate and its beneficiaries.

39. Pursuant to provisions of T.C.A. §45-2-1019, a state trust company may not pledge or create a lien on any of its assets except: to secure the repayment of money borrowed.
40. Under common law and federal and state laws, a trustee may not have a conflict of interest in dealing with its trust accounts. If a trustee lends his own money to a trust account, a conflict of interest is created, disqualifying the trustees to serve. In all events, a trustee's actions must conform to the trust purposes and be loyal to the beneficiaries, administering the trust solely for their benefit and to the exclusion of any considerations of personal profit or advantage.
41. The overdrafts resulted from necessary and proper expenses incurred in converting non-cash assets of defaulted trusts to cash from which bondholders might be repaid and constituted a priority lien to restore the overdrafts.
42. In administering trusts, a trustee and its officers and directors are authorized to rely on the faithful performance of duties delegated to agents and other professionals
43. Payment of the fees and expenses of such agents and other professionals, in addition to other charges applied in accord with the trustee's fee schedules, accounted for the shortfall in fiduciary cash deposits as offset by the Trust Department Receivables asset account carried

on the books of Sentinel's Trust Department.

44. The Notice of Possession filed May 18, 2004 at ¶2 stated that the Commissioner of the Department of Financial Institutions had seized Sentinel Trust Company because it had "used pooled fiduciary funds to provide operating capital for non-related bond issues, thereby creating a fiduciary cash shortfall . . ."
45. According to the testimony of Trey King, Special Investigator, Attorney General's Office and witness at the Restitution hearing on July 31, 2009 recorded on page 26 of the Transcript of Proceedings, he had not found, after five years of investigation, that any of the Danny Bates transactions had been charged to any trust account.
46. I had maintained at my trial in Davidson County Criminal Court that I had spent my own money and that no trust funds had been used. The jury disbelieved me.
47. At the Restitution Hearing on July 31, 2009, I testified that Plaintiff Receiver had been paid approximately \$5,069,000 through December 31, 2007 for administering the receivership (See page 60 of the Transcript of Proceedings).
48. Based on Court filings in the receivership action, Case #4781, Plaintiffs have collected approximately \$30 million in cash, of which approximately \$1.2 million came from collections of Sentinel's corporate assets.
49. Additionally, based on Court filings in the receivership action, Case #4781, Plaintiffs did not restore cash to the "pooled fiduciary account" sufficient to repay the prior liens held by Sentinel in its fiduciary capacity.
50. The facts discovered thus far and the laws applicable in this case indicate that responsibility for the alleged shortfall of \$4.395 million may be attributed directly to post-receivership

actions.

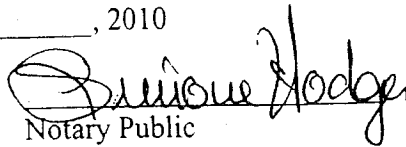
51. Further discovery is required to establish additional facts to be presented for trial by jury as demanded.

FURTHER AFFIANT SAITH NOT.



DANNY N. BATES
205 Bastin Rd
Hohenwald, TN 38462
931-796-1144

Sworn to and subscribed before me
on March 4th, 2010



Notary Public

My commission expires: 11-24-2012



CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon the following, via U.S. Mail, on this the 4th day of March, 2010.

J. Graham Matherne
Wyatt, Tarrant & Combs, LLP
2525 West End Ave, Suite 1500
Nashville, TN 37203-1423
Counsel for Receiver of Sentinel Trust Company

Janet Kleinfelter
Office of the Tennessee Attorney General
425 5th Ave North
Nashville, TN 37243
Counsel for Commissioner-in-Possession of Sentinel Trust Company

Gary O'Brien
163 Shady Lane
Hohenwald, TN 38463

Deanna J. Bates
205 Bastin Road
Hohenwald, TN 38462

Clifton T. Bates
312 Bastin Road
Hohenwald, TN 38462

IN THE CHANCERY COURT OF HICKMAN COUNTY, TENNESSEE

FILED

AM OCT 08 2009 PM

LINDA A. GOSSETT, CLERK & MASTER
BY: *Brenda Yates* D.C.

In re SENTINEL TRUST CO.

No. 4781

KEVIN P. LAVENDER, In his official capacity
as Commissioner-In-Possession of Sentinel
Trust Company and Receivership Management,
Inc., Received of Sentinel Trust,

Plaintiff,

v.

No. 4980

DANNY N. BATES, et al.,

Defendants.

ORDER

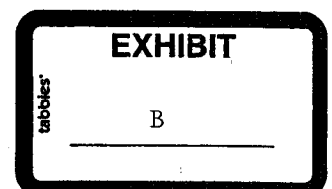
A conference was held in chambers at the Hickman County Courthouse on October 6,
2009. Tenn. R. Civ. P. 16.

The following were present: Danny Bates; Gary O'Brien; Graham Matherne (counsel for
receiver); and a representative of Receivership Management. Absent were: Janet Kleinfelter
(with permission); Clifton Bates; Howard Cochran (address unknown); and Deanna Bates.

The Court determines as follows:

1. Danny Bates, Deanna Bates and Sentinel Services Corporation are without
counsel, as counsel of record for them is extremely ill and will not resume

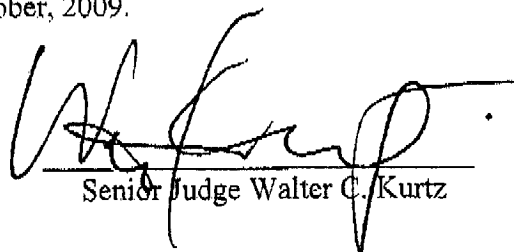
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practice. Mr. Danny Bates reported that he has had discussion with Peter Strianse but has not retained Mr. Strianse in this case. Danny Bates, Deana Bates and all other defendants have forty-five (45) days from the signing of this Order to retain counsel or they will be considered *pro se*. Retained counsel shall enter a formal notice of appearance.

2. In *Lavender v. Bates*, No. 4980, the Plaintiff shall have until December 23, 2009 to file a motion for summary judgment. The defendants shall have until January 27, 2010 to file a response. Any reply to the response shall be filed by February 15, 2010. The motion shall be heard at **9:30 a.m. on March 12, 2010 at the Hickman County Courthouse.**
3. The participants discussed that Mr. Danny Bates has been convicted in Davidson County Criminal Court of two (2) counts of theft in relation to Sentinel Trust Company and has been ordered to pay restitution of \$600,000.00. There as yet appears to be no specific order of restitution setting forth any procedure for payment or payment plan.

This the 7 day of October, 2009.


Senior Judge Walter C. Kurtz

cc:

Janet Klienfelter, Senior Counsel, Special Litigation Division
Office of the Tennessee Attorney General
P.O. Box 20207
425 5th Avenue North
Nashville, Tennessee 37202-0207

Graham Matherne
2525 West End Avenue, Suite 1500
Nashville, Tennessee 37203

Jeanne Barnes Bryant
Receiver Management Inc.
783 Old Hickory Boulevard, Suite 255
Brentwood, Tennessee 37027

Peter Strianse
Regions Center Suite 1700
315 Deaderick Street
37238-0115

James Milam
Assistant District Attorney
222 2nd Avenue North, Suite 500
Nashville, Tennessee 37201

Danny and Deana Bates
Sentinel Services Corporation
205 Bastin Road
Hohenwald, Tennessee 38462

Clifton Bates
312 Bastin Road
Hohenwald, Tennessee 38462

Gary O'Brien
163 Shady Lane
Hohenwald, Tennessee 38462

Howard Cochran
3636 Mahlon Moore Road
Spring Hill, Tennessee 37174

**HICKMAN COUNTY CLERK AND MASTER
104 COLLEGE AVENUE, SUITE 202
CENTERVILLE, TENNESSEE, 37033**

FAX COVER SHEET

DATE: October 28, 2009

TO: GRAHAM MATHERNE

PHONE /FAX: 615-256-1726

FROM: Sue

PHONE: 931-729-2522/ **FAX:** 931-729-3726

Number of pages: 2

Message: